

September 22 2019

8<sup>th</sup> Circuit Court of Appeals  
Office of the Clerk  
111 South 10<sup>th</sup> Street  
St. Louis, MO 63102

Re: Motion to recall the mandate, case #18-1242  
NLRB v. Jon Westrum

To Your Honors of the 8<sup>th</sup> Circuit Court of appeals,

The respondent, Jon Westrum respectfully requests a motion to recall the mandate that has been issued by the courts. Please find the reasons stated below. (My apologies on not doing this sooner. I was unaware that this portion needed to be done before I petition for a writ of certiorari to the supreme court).

- 1) The fact is that very important facts are not being considered because the Honorable Judge Steckler feels some testimony is untruthful, so she is unwilling to consider the facts laid out in the transcripts about the time bar. Your Honors sitting on the 8<sup>th</sup> Circuit, I beg you to review the complete transcripts on your own. I submitted in my last appeal most of the witnesses for the charging party had made mistakes in their own testimony, some corrected themselves, some just stammered. This is no different than my testimony. If you have never experienced this before it's a bit scary. It would be impossible to find justice if all the facts are not considered. You may hear this more than not, but as you review the transcripts you will see how Ms Brammers questioning was conducted. I was asked about the paperwork on dissolving J. Westrum Electric and starting the new company. I continuously told her I didn't do any of paperwork. But she was persistent at asking, so I tried to answer some and would get it wrong, I told her Alex my nephew did all of the paperwork because I don't understand it. The same type of questioning went on about my 2002 truck. The questions would keep coming but a bit different each time. I would answer, then realize the question was a little bit different, so I would correct my answer. I didn't know it was acceptable to try to make one stumble while questioning them. I was only expecting straight forward questions.

I would also beg of your Honors to please allow the testimony about not being an alter ego. I tried to file a brief for this but I was told I cannot fight this because I had to have an attorney do it for me because the company was an LLC. I argued with them stating my name is the respondent. I have spent over \$60,000.00 fighting this fight, I wasn't able to afford an attorney to continue. I thought for sure the appeals court could correct it. I fought the best I could, your Honors gave me so much latitude, and I thank you for that. This is the reason it's being barred, I wasn't allowed.

The NLRB will fight this motion, they have fought every motion I have asked for. I also wish to ask them to help seek the truth in this case by allowing all of the testimony be allowed to be considered. I have read the oath that attorneys take, it doesn't matter what side you fight for, but we fight for truth and justice. Only by allowing all the testimony to be considered will justice prevail. If they believed in justice, they would allow all the facts

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EIGHTH CIRCUIT

to be examined by the higher courts. We are all human, we make mistakes, some may lean a little more one way or another with their decision based on their beliefs or what "team" one likes better. I thought if I didn't feel my case was not tried fairly the appeals court would review all the transcripts and talk about it and come up with a decision.

- 2) The charging party states the 2 companies are alter egos. First off I must say the union was never present in the conversations Alex and I had pertaining to dissolving my first company and starting a new company. Alex was interested in the company. My first company was only a sole proprietor company. We decided if he wanted to make a go of it the company should be incorporated to be protected if the company was going to grow. He dissolved my company and started the new company. There was no malice intended in starting a new company. Every aspect of dissolving the old and starting the new was done by following the laws of federal and state. My grandpa, my dad and one of my brothers also owned electrical shops before me. When Alex showed an interest in making a shop bigger I was happy for him.

I had never heard alter ego before, so I looked it up. What I understand is it's a "Legal doctrine whereby the court finds a corporation lacks a separate identity from an individual or corporate shareholder, resulting in injustice to the corporations debtors. Finding alter ego gives the courts cause to pierce the corporate veil and hold individual shareholders personally liable for debts of the corporation."

That being said, there are not 2 companies, the first was dissolved. Federal and state taxes, business license through the state, all bonding and insurances, etc. All creditors were paid. The bank account was left open because I owed some federal tax and they set up direct withdraws from it. I would make deposits into that account personally from my own bank account, nothing was EVER deposited into the old account from the new company. So now this old company was dissolved. It was a sole proprietor company, me, no shareholders, no injustice to any debtors, all were paid. Dissolved. This then would prove to be the greatest amount of separation between the 2 companies you can get.

I also found this list from a case in California considering if 2 companies are actually alter egos. Maybe the requirements aren't the same in federal court. I don't know, but these are the facts that there is no alter ego in this case. But these facts have to be considered. I tried to file a brief for this but was denied because they wouldn't allow it because I didn't have an attorney any longer.

- a) Comingling of funds – separate bank accounts. I left my first bank account open only to pay the tax that was owed from the first company. The IRS and I set up a direct withdraw for it. Both companies had separate tax ID numbers.
- b) Failure to segregate funds – see "a" above
- c) Diversion of funds or assets – I NEVER deposited any money from the second company to the first, assets that I had were my personal tools I have no matter who I work for, my personal truck, my Email, cell phone, etc.
- d) Treatment of shareholder or corporate assets as own – there are no shareholders, and J Westrum Electric, the 1<sup>st</sup> company that was dissolved had no assets, again I had my personal tools, my personal truck, my personal email address and my personal cell phone
- e) Failure to maintain minutes – the dissolved company was a sole proprietor company, I

didn't do a lot of work for one. I was also unaware I was to keep minutes. We were also unaware that the new company was required to do minutes

- f) Identical equitable ownership in 2 entities – I had to look this one up. I still really don't understand what it means. But I believe has to do with both companies using the same office and equipment. I guess parts of this I did, I sat at my personal desk as a sole proprietor and did my paperwork there. I would also use my personal lap top computer, that I used to type invoices. I would also correspond to individuals that I may do work for, and my mom and family and sometimes shop on line. When we started the new company I would do bids on note paper, type it and send them to Alex so he can send them to the contractors and he would take it from there using his personal computer at his desk at his house.
- g) Officers and Directors of one entity same as controlled corporation – I had no officers with my first company, I was the master of record, the owner. I took care of the little paper work I had. (the work I did was maintenance for a furniture store and some remodeling. My main income was with a partner that bought and repaired houses.) I had H&R block do my taxes. At the end of J Westrum Electric, Alex asked if he could work for me as a book keeper because he had just finished collage and needed experience to get an accounting job. I told him he could but there wasn't much to book keep because I did little work. I told him he could look at the jobs I did and figure out if I made any money on them. Alex asked me a few times why I didn't hire workers. I told him I hate paperwork, I'm terrible at it. He was now interested in the electrical business, and said he could do the paperwork. I told him he would have to dissolve my old company and start a new one. I won't do anything but bid for him. He agreed. My old company was dissolved, and the new company started. I again was the owner and master of record. I would bid on jobs and send that to Alex were he would write up a proposal and sent them to the contractors from his computer in his house. If it was accepted they would correspond with Alex with the contract, insurances, bonds, pay draws, final payments and lien wavers.
- h) Use of the same office or business location – Again the "office or business location" for the first company was a desk in my house. This company then dissolved. The "office or business location" of the second company, I would bid on jobs and send that to Alex at his home on his personal computer. The 2 companies did NOT exist at the same time.
- i) Employment of same employees- the first company had no employees. Alex wanted to learn accounting so I let him look over my invoices to see if I made money. There were a few times I asked Alex I he wanted to give me a hand working. He did, not that I really needed his help, but he wasn't working and it was nice not having to work alone. This is when he wondered why I didn't hire workers, he enjoyed it. This is when I told him I don't like paperwork. He was interested so I told him if he got at least 1 journeyman and another guy or so, I would bid a job for him to see if he could handle the work and enjoy doing it. He took care of everything on that job with the men, paying them and paperwork. I stopped at the job to be sure it was being done properly due to me being the master of record. Some of his friends were in the electrical field. He got a journeyman and another apprentice. Everything was done to code and the states requirements. These guys were not employees of my company, Alex took care of them. I told him If he truly liked it, he could dissolve my company and start a new one. I told him he could have the company when I retire. He talked to his dad about it, then

Alex did all the paperwork to dissolve my first company complete except the bank account which was left for the federal tax payments that I personally took care of. He then did all the paperwork for the new company which was an LLC because he wanted to have a bigger company.

- j) Total absence of corporate assets – here again I can only assume they want to compare assets of both companies. The first company, sole proprietor, personal tools, truck and computer, this company was dissolved. Then came the second company, LLC, I still had my personal tools, truck and computer. Additional equipment first company didn't have. Blue print printer, 20+ ladders, 4 gang boxes, 12+ material carts, 7 scissor lifts, 6 hammer drills, many power tools, many temp lights, many shop hand tools. The list goes on.
- k) Under- capitalization – the first company, I worked a second job because all I did was maintenance and some small jobs. That was my choice, but I made enough to be comfortable. Then that company was dissolved. The second company did just fine. There were 8-10 employees at any given time. Their wages were good. They got 2 weeks payed vacation, 7 payed holidays, \$700-\$800 bonuses at Christmas time, nice company dinners at Christmas time, we would buy lunches for the workers 6 or more times a year. We shared with the workers, because we appreciated their working for us. All the bills were payed, all the creditors were payed. We had no shareholders. We cheated NO one.
- l) Use of corporation as a mere shell – as you see the statement above, the company was not a mere shell. It was a good company that took care of the employees, and payed their debts.
- m) Instrumentality or conduit for single venture of another corporation – not understanding this on either but there are not 2 businesses for one to hide or conduit or anything else for the other
- n) Concealment or misrepresentation of the responsible ownership, management and financial interests – for company #1, it was all public information that I was the owner and master of record, it was dissolved, except for the one bank account that was left open to pay federal taxes. Only I made deposits into this account after it was dissolved to have tax payments taken out automatically. Once that company was dissolved, the second companies information was also public information, I was the owner and master of record, It also only had one bank account. If a contractor sent me an invitation to bid using the old company name we corrected them. There was NEVER a contract offered, insinuated, or signed using the old company name
- o) Concealment or misrepresentation of personal business activities – contractors would invite us to bid on the electrical for specific construction jobs. They would reach out to us well knowing we were an electrical contractor. They were looking for an electrical contractor
- p) Disregard of legal formalities – my first company was set up through state licensing and through state and federal revenue. It was also bonded and insured according to the state laws and requirements. The bank account was set up as a business account with my federal ID number. That company was dissolved according to the state laws and requirements, canceling my business name with the state, my state and federal tax ID's, and my bonds and insurances. The bank account was left open to make payments for the tax I owed for the first company, which I personally would make deposits. The



second company was also set up according to the state and federal laws and requirements. Again, all done with complete regards to state and federal laws.

- q) Failure to maintain arms length relationships among related equities – this one was hard to look up. What I think they are saying is that “the 2 business’ must not owe any special obligation to another”. “There must be an absence of control of one over the other”. “The 2 parties must act within their own self interests”. For my situation, with the first company dissolved, there is only one company to obligate to, only one company to control.
- r) The use of the corporate identity to procure labor, services or merchandise for another entity – again, there is only one “entity”, one “identity”. The first company was dissolved
- s) The diversion of assets from a corporation by or to a stockholder or other person or entity to the detriment of creditors – all creditors have been paid. Never did we not pay a single bill we owed. All creditors from my first company were also paid in full before that company was dissolved with the exception of my federal tax, in which we had a payment plan with them and I payed that personally with my own money, never was there a deposit from the second company to the first. I payed it myself.
- t) The manipulation of corporate assets and liabilities in entities so as to concentrate the assets in one and the liabilities in another – I would have to believe there needs to be 2 entities for this to happen. Again in our situation the first company was dissolved.
- u) The contracting with another, with the intent to avoid performance by use of the corporation entity as a shield against personal liability – as stated above, there would need to be 2 entities for this to happen. In this situation the first company was dissolved, the second company would bid the work, write the contract, do the work and get payed for the work.
- v) The use of the corporation as subterfuge for illegal transactions – again companies would reach out to us to perform electrical work for them, it isn’t deceit if you really do the work that your hired to do under the company name that is really you
- w) The formation and use of a corporation to transfer to it the existing liability – we dissolved the first company with all creditors and any bill made by that company paid in full, again with the exception of the federal tax in which the IRS set up a payment plan that they had auto withdraw. I personally would be sure I had money in the account deposited from my own money. It was my debt, I took care of it.

These facts prove there is factually no alter ego

- 3) The time bar has been discredited due to the fact that the Honorable Judge Steckler felt I have been untruthful. That is the Honorables opinion. I came to the appeals court to have my whole case reviewed by 3-5 or so Judges, to have all of the transscripts reviewed. You are the fresh eyes, we have the right to have it reviewed completely. I have had no reason to lie about any of this testimony. I am not fighting this fight to waste my money, my time, or your Honors time. I am 59 years old, I should be saving every dime for my wife and I to retire in 5 years, now I have been spending that money to fight this and I am being forced to quit my business, to quit working before I want to. In our trade, nobody hires an old guy like me. Loosing makes me have to be a union contractor. I have stated before, I don’t want to, I changed for Alex. Being union I wouldn’t be able to compete with other nonunion

contractors. We told that to Pete Lindahl, the union business manager and he told us "well then I guess you go out of business", He also told us, after we told him the guys don't want to be union, his comment to that was "they were looking for a job when they found you".

I'm not fighting this for fun, this is the complete opposite of fun. I have spent so so many hours working on this, away from my family to try to do the best I can. I have sleepless nights worrying about the outcome. I don't eat right because I just don't get hungry from the stress. My wife worries about me so it's been taking a tole on her also. I don't say these things for sympathy, these are mere facts. I should be enjoying time with my wife and family. Your Honors should be taking on real events that matter to our country, not deciding how to punish some poor sap that has worked hard his whole life trying to enjoy life.

The time bar cannot be discredited, it shows facts that Mr Kripotos did know about my old company being dissolved. He visited a job sight we were working on May 2015, he called me and left a voice mail to call him to talk about my new company, and I called him back 30 minutes later and we talked for about 12 minutes. My phone records for both his voice mail to me and our 12 minute conversation were both submitted to evidence. But in court he conveniently forgot about our 12 minute conversation, but clearly remembered conversations 5 years earlier. He also asked Mr Blachowiak to pull permits on the company, to see were we have worked. Mr. Kripotos also stated in testimony that he called the BA for the St. Paul local to tell him, they did nothing. This surely shows he was aware that I dissolved my company. The union says the time bar didn't start because I was actually in St. Pauls jurisdiction. You can't unknow something that is being done in your local just because, especially after he had pursued it 3 times to 3 different people. This is all in his testimony . May 2015 is in fact when the time bar started. It cannot be ignored the he did in fact know about my company being dissolved. It was his lack his company policy, lack of judgement or just forgetfulness that he didn't report this to his supervisor. Nothing else was done until March 2016. Time Bar. 10 months.

These are the reasons I am requesting a motion to recall the mandate. You can see what is outlined here, you can see they are wrong about the time bar and the alter ego. But I need your Honors to allow all the facts to be included. I also will hope the NLRB will not disapprove of this motion and truly let the appeals system work. It will allow me to continue my fight for innocents. I have been introduced to a law firm to help me present this to the Supreme Court. They have the experience with them.

#### CONCLUSION.

The NLRB has nothing to lose by letting me try to correct this, but I have everything to lose. I must keep fighting.

I apologize for bothering your Honors. I hope you can understand I'm 59 years old, I can't start my life over. I'm just trying to clear this injustice, and try to enjoy my life with my family

Thank you very much for your consideration.

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